

STATE OF MICHIGAN
COURT OF APPEALS

R. L. Williams,

Plaintiff-Appellant,

v

E. L. Sherrod,

Defendant-Appellee,

and

E. Sherrod, a Minor,

Appellee.

UNPUBLISHED

May 30, 2013

No. 307855

Wayne Circuit Court

LC No. 03-326957-DC and 07-
475639-NA

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting defendant sole physical custody of the minor child, changing the child's domicile from Michigan to Georgia, and dismissing the wardship over the child, in this custody dispute decided in conjunction with an abuse and neglect proceeding in the juvenile court. Because the trial court did not err by retaining jurisdiction over the child to decide defendant's motion for change of custody, the trial court's findings on best-interest factors (b) and (d) were not against the great weight of the evidence, and the trial court did not abuse its discretion by granting defendant's motion for change of custody, we affirm.

I. JUVENILE COURT'S JURISDICTION TO DECIDE CUSTODY ISSUE

Plaintiff first argues that the trial court abused its discretion by refusing to return the child to her and by continuing jurisdiction over the child for the purpose of ruling on defendant's motion for change of custody, which pertained to the domestic relations proceeding. "[W]hether the circuit court has jurisdiction over both child protection actions and domestic relations matters is a question of law [that] we review de novo." *In re AP*, 283 Mich App 574, 589-590; 770 NW2d 403 (2009).

Plaintiff asserts that the trial court, Judge Mark Slavens, assigned to the juvenile section of the family division, should have dismissed the juvenile proceeding when plaintiff fulfilled her requirements for reunification with the child and allowed defendant's motion for change of

custody to be heard by Judge Maria Oxholm, assigned to the domestic relations section of the family division, who had previously presided over custody matters involving the child. Generally, new actions involving the custody of a child, previously the subject of a custody action, must be filed as a motion in the earlier action. MCR 3.204(A)(1). In addition, “[w]hen 2 or more matters within the jurisdiction of the family division of circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.” MCL 600.1023. This Court has recognized exceptions to this rule and has examined the separate and interrelated roles of domestic relations and juvenile courts, within the family division, in addressing issues pertaining to children under the juvenile code, MCL 712A.1 *et seq.*, and the Child Custody Act (CCA), MCL 722.21 *et seq.* In *In re AP*, 283 Mich App at 590-594, this Court stated:

In this case, there are two distinct and separate statutory schemes affecting the care and custody of the minor child: the juvenile code and the CCA. Relevant to each of these statutory schemes are the relative interests of the state, the parents, and the child in the child’s upbringing.

* * *

The state . . . may become involved in a child’s upbringing under certain limited circumstances when a child’s welfare is affected. Under domestic relations law, for example, certain actions implicate the state’s interest in the child’s welfare. These include actions for child support, paternity actions, and dissolution of marriage. If any of these actions directly or incidentally involve the legal or physical custody of a child, the courts are bound by the CCA in determining who should have physical and legal custody of a child. In making this determination, the child’s best interests are of paramount importance, and the goal is to resolve a custody dispute in a way that promotes the child’s best interests and welfare. Once a court enters a custody order, it cannot change the award of custody without overcoming certain procedural safeguards. See, e.g., MCL 722.25(1); MCL 722.27. These safeguards are in place for the stability of the child and are meant to protect against unwarranted and disruptive changes of custody.

Similarly, the state may become involved in the parent-child relationship when a child’s safety is threatened, for example, if the parent has abused or neglected the child or has abandoned the child. The state’s involvement under these types of circumstances is governed by the juvenile code, MCL 712A.1 *et seq.* A court presiding in juvenile proceedings obtains jurisdiction over the matter once a petition is filed and the court has authorized the petition after conducting a preliminary inquiry. MCL 712A.2; MCL 712A.11(1). Although the court has jurisdiction over the matter, the child will not come under the court’s jurisdiction and become a ward of the court until the court holds an adjudication on the merits of the allegations in the petition and finds by a preponderance of evidence that there is factual support for permitting judicial intervention. Subsequently, the court can hold dispositional review hearings and permanency planning hearings

and enter orders governing the child's care and custody. MCL 712A.18f(4). The goal of these proceedings is always reunification of the family unit.

However, a conflict may arise concerning the care and custody of a child, as in this case, where domestic relations law and juvenile law intersect. Obviously, upon entry of a child custody order under the CCA, a child's parents, or other custodians, must abide by the terms of the custody order. However, once a juvenile court assumes jurisdiction over a child and the child becomes a ward of the court under the juvenile code, the juvenile court's orders supersede all previous orders, including custody orders entered by another court, even if inconsistent or contradictory. MCR 3.205(C). In other words, the previous custody orders affecting the minor become dormant, in a metaphoric sense, during the pendency of the juvenile proceedings, but when the juvenile court dismisses its jurisdiction over the child, all those previous custody orders continue to remain in full force and effect. This is necessarily the result because the prior domestic relations court never relinquished its jurisdiction over the custody dispute, as the CCA vests a court with continuing jurisdiction over the matter, nor was the prior court required to relinquish or waive its jurisdiction in order for the juvenile court to exercise its jurisdiction. MCR 3.205(A). In addition, the juvenile court's orders function to supersede, rather than modify or terminate, the custody orders while the juvenile matter is pending because the juvenile orders are entered pursuant to a distinct statutory scheme that takes precedence over the CCA. We note that during the duration of the juvenile proceedings, while the parties subject to the custody order can move to modify the custody order, any modification would remain superseded by the juvenile court's orders. [Case law citations omitted.]

"[A] trial court that is part of a circuit court's family division under MCL 600.1011 presiding over a juvenile case has jurisdiction to address related actions under the CCA consistent with MCL 600.1021^[1] and MCL 600.1023,^[2] as well as local court rules." *Id.* at 578.

¹ MCL 600.1021 provides, in relevant part:

(1) Except as otherwise provided by law, the family division of circuit court has sole and exclusive jurisdiction over the following cases commenced on or after January 1, 1998:

* * *

(e) Cases involving juveniles as provided in chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

* * *

There is no authority to preclude a circuit judge from determining custody pursuant to the CCA ancillary to making determinations under the juvenile code To the contrary, the RJA, as amended by 1996 PA 388, specifically permits a judge presiding over a juvenile matter to consider related actions under the CCA. [*Id.* at 598-599.]

In this case, the juvenile court had jurisdiction over the child and her step-siblings at the time that defendant filed his motion for change of custody. The children were removed from plaintiff's home and the court assumed jurisdiction over them in December 2007. Defendant filed his motion for change of custody with the juvenile court in August 2009. The trial court did not dismiss the wardship over the child's step-siblings until January 2010. Thus, even accepting plaintiff's argument that the trial court should have returned the child to plaintiff along with the child's step-siblings, the court nevertheless would have had jurisdiction to address defendant's motion filed pursuant to the CCA. See *id.* at 578. As this Court stated in *In re AP*, 283 Mich App at 599, "[b]ecause the juvenile section has the same authority and jurisdiction as the domestic relations section, MCL 600.1021, . . . [defendant's] motion for custody, as well as the accompanying child protective action, were properly before the court." *Id.* at 599.

Notably, plaintiff does not contend that the trial court erred by failing to follow the procedural requirements for a determination of custody pursuant to the CCA. See *id.* at 599 ("[W]hen a family division court deems it appropriate to consolidate numerous matters concerning the same family that fall within the jurisdiction of the family division under MCL 600.1021 but may have originally been assigned to different judges, it is necessary that family division courts follow the procedural requirements incumbent upon them.") Rather, relying on MCL 712A.19a(5) and MCR 3.976(E)(2), plaintiff asserts that once the trial court determined that returning the child to plaintiff's home would not cause a substantial risk of harm to the child, the court should have returned the child to plaintiff's care, dismissed the wardship, and transferred the custody matter to the domestic relations section of the family court.

Plaintiff's argument is based on the erroneous premise that returning the child to plaintiff's care would have necessarily resulted in the immediate termination of the wardship over the child. To the contrary, as with the child's step-siblings, in-home services would likely have been necessary to facilitate the child's move from Georgia to Michigan and her return to plaintiff's care. Thus, plaintiff's argument that the juvenile court's jurisdiction over the child would have ended simultaneously with the child's return to plaintiff's care is tenuous at best. Further, given that the juvenile court had presided over this matter since December 2007,

(g) Cases of child custody under the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31

² As previously stated, MCL 600.1023 provides:

When 2 or more matters within the jurisdiction of the family division of circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.

encompassing a period of nearly one and one-half years, its retention of jurisdiction was logical and an economical use of judicial resources considering its familiarity with the parties and issues relevant to a custody determination. As recognized in *In re AP*, 283 Mich App at 599 n 18:

[W]hile MCL 600.1023 would indicate that the original judge who heard the [custody] action in 2004 should be assigned to the case, the lengthy juvenile proceedings and the geographical separation of the juvenile and domestic relations sections of the Wayne Circuit Court would make it impracticable to assign the matter to [Judge Oxholm's] docket in light of [Judge Slavens] comparatively heightened familiarity with the current proceedings.

Similarly, as our Supreme Court stated in *Hunter v Hunter*, 484 Mich 247, 284 n 5; 771 NW2d 694 (2009):

It is a familiar principle that when a court of competent jurisdiction has become possessed of a case, its authority continues, subject only to appellate authority, until the matter is finally and completely disposed of; and no court of co-ordinate authority is at liberty to interfere with its action. [Quotation marks and citation omitted.]

Finally, we note that our conclusion is consistent with the Wayne Circuit Court's "family court plan" and its administrative procedures. As stated in *In re AP*, 283 Mich App at 595-596:

The Wayne Circuit Court developed a family court plan that divided its family division into a juvenile section and a domestic relations section, each of which is assigned particular causes of action in part because the geographical distance between the Lincoln Hall of Justice (where child protective proceedings are heard) and the Coleman A. Young Municipal Building (where domestic relations matters are heard.) Wayne Circuit Court Administrative Order No. 1997-04; Wayne Circuit Court Administrative Order No. 1997-05. For example, the juvenile section is assigned delinquency and abuse and neglect cases, whereas the domestic relations section is assigned cases pertaining to divorce, paternity, support, custody, and emancipation of minors. Each section, however, has the same authority and jurisdiction as the other section over matters enumerated in MCL 600.1021.

The Wayne Circuit Court has also developed its own procedures to better serve families who face multiple matters before different judges within its family division consistent with MCL 600.1023: When a domestic relations dispute arises and a juvenile action involving the same parties is already pending, or vice versa, one judge may resolve both matters if the judges on the respective dockets confer and deem it appropriate. See AO 1997-04; AO 1997-05.

After the child was removed from plaintiff's home, she was subjected to numerous placements while the abuse and neglect proceeding continued. After several unsuccessful placements with other family members, she was placed with her paternal grandmother in Georgia in June 2008, and from all reports was doing well in that placement. It is difficult to ascertain

how plaintiff can suggest that the child's best interests would have been better served had the child been removed from her grandmother's care and returned to plaintiff only to face the possibility of yet another residence change following the court's custody determination. As this Court has noted, "the primary goal of the Child Custody Act . . . is to secure custody decisions that are in the best interests of the child," which "cannot be reduced merely to providing expedient proceedings." *Fletcher v Fletcher*, 447 Mich 871, 889; 526 NW2d 889 (1994). The trial court's decision is also consistent with our Legislature's intent underlying the CCA to provide stability and security for children by seeking to "minimize the prospect of unwarranted and disruptive change[s] of custody" *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). Accordingly, the trial court did not err by retaining jurisdiction over the child to decide defendant's motion for change of custody.

II. BEST-INTEREST FACTORS

Plaintiff next challenges the trial court's findings regarding best-interest factors (b) and (d) set forth in MCL 722.23. Custody orders "shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; see also *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). "Findings of fact, such as the trial court's findings on the statutory best-interest factors, are reviewed under the 'great weight of the evidence' standard." *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011). "Under this standard, a reviewing court should not substitute its judgment on questions of fact unless the factual determination clearly preponderates in the opposite direction." *Pierron*, 486 Mich at 85 (quotation marks, citations, and brackets omitted). "Finally, 'clear legal error' occurs when a court incorrectly chooses, interprets, or applies the law." *Dailey*, 291 Mich App at 665.

"Above all, custody disputes are to be resolved in the child's best interests." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001).

In determining the best interests of the child, the court must review the best-interest factors listed in MCL 722.23. In addition, the court must consider the general level of cooperation and agreement between the parties when considering joint custody. When ruling on a custody motion, the circuit court must expressly evaluate each best-interest factor and state its reasons for granting or denying the custody request on the record. [*Dailey*, 291 Mich App at 667 (quotation marks and citations omitted).]

Plaintiff challenges the trial court's findings on best-interest factors (b) and (d). Factor (b) pertains to "[t]he capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any." MCL 722.23(b). The trial court determined that this factor favored neither party. The court recognized that plaintiff cared for and disciplined the child when the child was in plaintiff's care and that defendant had been doing so for the previous three years. Although the court opined that defendant had been more attentive to and had addressed the child's educational needs, because the other aspects of this factor were deemed equal between the parties, the court determined that defendant did not meet his requisite burden of proof regarding factor (b).

Plaintiff contends that the trial court improperly weighed in defendant's favor the fact that he moved in with his mother to establish a relationship with the child, ignored that plaintiff had cared for the child for five and one-half years, and determined that the child was doing better in school while failing to recognize that plaintiff did not have an opportunity to be involved in the child's education. Although the child's placement was with her paternal grandmother, the trial court did not improperly consider the fact that defendant resided with his mother and helped care for the child for the previous three years since defendant was not precluded from living in his mother's home. In addition, the trial court did not improperly determine that the child had performed better academically while defendant was involved in her upbringing. Although the child began first grade when she moved to Georgia to reside with defendant's mother, defendant testified that she did not perform at her appropriate grade level at that time. Moreover, the fact that the child was not in plaintiff's home when she began school is directly attributable to plaintiff's own behavior, which culminated in the initiation of abuse and neglect proceedings and the child's removal from plaintiff's residence. Overall, the trial court's finding that factor (b) favored neither party is not against the great weight of the evidence.

Factor (d) pertains to "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). The trial court determined that factor (d) favored defendant. The court recognized that the child lived with defendant and his mother and acknowledged that the child's placement was with her grandmother rather than defendant. The court also determined that defendant had provided a stable and satisfactory environment for the child for three and one-half years. Further, the court opined that plaintiff's inability to care for the child during the same period of time was directly attributable to her own actions.

Plaintiff asserts that the trial court improperly weighed this factor in defendant's favor because the child was placed with her grandmother rather than defendant and because the court had previously determined that the child's established custodial environment was with plaintiff. Contrary to plaintiff's argument, the trial court explicitly recognized that the child was placed with her paternal grandmother and not with defendant. In addition, the court did not improperly determine that defendant had provided a stable and satisfactory living environment for the child. As noted in *Mogle v Scriver*, 241 Mich App 192, 199; 614 NW2d 696 (2000) (citation omitted), "in making their 'best interests' determination, trial courts must not consider the 'acceptability' of the homes to be established by each parent, but instead must concentrate on the 'permanence' or 'stability' of the family environments offered by the contesting parents." At the outset, defendant was not prohibited from living in his mother's home and the fact that he lived there was known throughout the proceeding. The child had remained in the same environment, with the same caregivers, since her placement in Georgia. In contrast, the court recognized that the child's placement outside of plaintiff's home was attributable to the disruptions and chaos that had occurred in that home. Although the court determined that an established custodial environment existed with plaintiff based on the previous custody order, that determination did not preclude the court from concluding that defendant was currently providing the child with a stable and satisfactory living environment. See *Berger v Berger*, 277 Mich App 700, 708-709; 747 NW2d 336 (2008). Thus, based on the testimony presented regarding the child's current living situation and because the court's determination regarding the child's established custodial environment was premised on the custody order entered years previously, the trial court's findings were not inconsistent and did not contravene the great weight of the evidence.

III. MOTION FOR CHANGE OF CUSTODY

Finally, plaintiff contends that the trial court abused its discretion by granting defendant's motion for change of custody.³ "To whom custody is granted is a discretionary dispositional ruling" that this Court reviews for an abuse of discretion. *Fletcher*, 447 Mich at 880. In the context of child custody proceedings, "[a]n abuse of discretion exists when the trial court's decision is palpably and grossly violative of fact and logic" *Dailey*, 291 Mich App at 664-665 (quotation marks omitted). When a modification of custody would alter a child's established custodial environment, there must exist clear and convincing evidence to show that the change would be in the child's best interests. MCL 722.27(1)(c); see also *Hunter*, 484 Mich at 259.

It appears that plaintiff is arguing that the trial court should have determined that the child's established custodial environment was with her and employed the "clear and convincing evidence" standard in determining whether a change in custody was in the child's best interests. Contrary to plaintiff's contention, the trial court did exactly that. The court determined that the child's established custodial environment was with plaintiff based on the previous custody order and that a change of circumstances existed based on the child's removal from plaintiff's home and the associated abuse and neglect proceeding. In deciding defendant's motion for change of custody, the trial court properly applied the "clear and convincing evidence" standard.

Plaintiff further asserts that defendant's efforts to "surreptitiously destroy" her established custodial environment should not be rewarded. It is unclear what relief plaintiff seeks in making this argument. Because the trial court determined that the child's established custodial environment was with plaintiff, rather than defendant, and properly applied the higher "clear and convincing evidence" standard, plaintiff is entitled to no relief.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens

³ Although plaintiff's statement of the questions involved asserts that the trial court also erred by granting defendant's motion for change of domicile, plaintiff presented no argument regarding the motion for change of domicile in the argument section of her brief on appeal. Accordingly, she has abandoned any claim of error with respect to the motion for change of domicile. "A party abandons a claim when it fails to make a meaningful argument in support of its position." *Berger*, 277 Mich App at 712.